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Chapter No. 371
16/HR26/R1002
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HOUSE BILL NO. 1380

Originated in House  Clerk

HOUSE BILL NO. 1380

AN ACT TO AMEND SECTION 99-3-41, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT AN ARRESTING AUTHORITY SHALL REPORT ALL HIV TEST RESULTS TO THE STATE DEPARTMENT OF HEALTH AND THE CHILDREN'S SAFE CENTER, NO LATER THAN 24 HOURS AFTER THE TEST RESULTS ARE AVAILABLE; TO AMEND SECTION 99-49-1, MISSISSIPPI CODE OF 1972, TO DELETE THE PROVISION THAT REQUIRES THE STATE TO PRESERVE THE BIOLOGICAL EVIDENCE TAKEN IN TESTS FOR HIV/AIDS OF PERSONS ARRESTED FOR THE COMMISSION OF A SEX CRIME AGAINST A MINOR, WHICH CONFLICTS WITH THE PROVISION OF SECTION 99-3-41 THAT REQUIRES THE BIOLOGICAL SAMPLE TO BE DESTROYED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 99-3-41, Mississippi Code of 1972, is amended as follows:

99-3-41. (1) Every person who is arrested for the commission of any sex crime against a minor as provided in Section 97-5-51, the Mississippi Child Protection Act, shall be tested for the human immunodeficiency virus (HIV) and the acquired immune deficiency syndrome (AIDS). Such test shall be administered upon arrest but, no later than twenty-four (24) hours after arrest. The test shall be performed by any qualified medical personnel in conjunction with the arresting authority. The arresting authority

shall report all test results * * * to the State Department of Health and the Children's Safe Center, no later than twenty-four (24) hours after the test results are available. * * * Each victim of the alleged offense, or the parent, guardian, or custodian of each minor victim, and the accused shall be notified of the test results, * * * no later than twenty-four (24) hours after the test results are available. The State Department of Health shall provide counseling and the referral for the appropriate treatment for each victim when the accused tested positive for HIV or AIDS. For the purposes of this section, the term "minor" means the same as defined in Section 97-5-51. The HIV and AIDS tests collected under the authority of this section shall not be used for any other purpose that is not authorized by this section.

(2) Any qualified medical personnel and/or arresting authority who is authorized to perform the test required by subsection (1) of this section shall only keep the results of HIV and/or AIDS tests, but shall destroy any biological sample taken from a person for purposes of performing such tests.

SECTION 2. Section 99-49-1, Mississippi Code of 1972, is amended as follows:

99-49-1. (1) **Legislative intent.** The Legislature finds that:

(a) The value of properly preserved biological evidence has been enhanced by the discovery of modern DNA testing methods,

which, coupled with a comprehensive system of DNA databases that store crime scene and offender profiles, allow law enforcement to improve its crime-solving potential;

(b) Tapping the potential of preserved biological evidence requires the proper identification, collection, preservation, storage, cataloging and organization of such evidence;

(c) Law enforcement agencies indicate that "cold" case investigations are hindered by an inability to access biological evidence that was collected in connection with criminal investigations;

(d) Innocent people mistakenly convicted of the serious crimes for which biological evidence is probative cannot prove their innocence if such evidence is not accessible for testing in appropriate circumstances;

(e) It is well established that the failure to update policies regarding the preservation of evidence squanders valuable law enforcement resources, manpower hours and storage space; and

(f) Simple but crucial enhancements to protocols for properly preserving biological evidence can solve old crimes, enhance public safety and settle claims of innocence.

(2) **Definitions.** For the purposes of this section:

(a) "Biological evidence" means the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone,

bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. This definition applies whether that material is catalogued separately, such as on a slide, swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, cigarettes or other items.

(b) "DNA" means deoxyribonucleic acid.

(c) "Custody" means persons currently incarcerated; civilly committed; on parole or probation; or subject to sex offender registration for the period of the registration or for the first five (5) years of the registration, whichever is the shorter period.

(d) "Profile" means a unique identifier of an individual, derived from DNA.

(e) "State" refers to any governmental or public entity within Mississippi, including all private entities that perform such functions, and its officials or employees, including, but not limited to, law enforcement agencies, prosecutors' offices, courts, public hospitals, forensics laboratories, and any other entity or individual charged with the collection, storage or retrieval of biological evidence.

(3) **Preservation of evidence procedures.** (a) The state shall preserve all biological evidence:

(i) That is secured in relation to an investigation or prosecution of a crime for the period of time that the crime remains unsolved; or

(ii) That is secured in relation to an investigation or prosecution of a crime for the period of time that the person convicted of that crime remains in custody * * *.

(b) This section applies to evidence that:

(i) Was in the possession of the state during the investigation and prosecution of the case; and

(ii) At the time of conviction was likely to contain biological material.

(c) The state shall not destroy biological evidence should one or more additional co-defendants, convicted of the same crime, remain in custody, and shall preserve the evidence for the period of time in which all co-defendants remain in custody.

(d) The state shall retain evidence in the amount and manner sufficient to develop a DNA profile from the biological material contained in or included on the evidence.

(e) Upon written request by the defendant, the state shall prepare an inventory of biological evidence that has been preserved in connection with the defendant's criminal case.

(f) The state may destroy evidence that includes biological material before the expiration of the time period specified in paragraph (a) of this subsection if all of the following apply:

(i) No other provision of federal or state law requires the state to preserve the evidence.

(ii) The state sends certified delivery of notice of intent to destroy the evidence to:

1. All persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment related to evidence in question;

2. The attorney of record for each person in custody;

3. The Mississippi Office of Indigent Appeals;

4. The district attorney in the county of conviction; and

5. The Mississippi Attorney General.

(iii) No person who is notified under subparagraph (ii) of this paragraph (f) does either of the following within sixty (60) days after the date on which the person received the notice:

1. Files a motion for testing of evidence under Title 99, Chapter 39, Mississippi Code of 1972; or

2. Submits a written request for retention of evidence to the state entity which provided notice of its intent to destroy evidence under subparagraph (ii) of this paragraph (f).

(g) If, after providing notice under paragraph (f)(ii) of this subsection of its intent to destroy evidence, the state

receives a written request for retention of the evidence, the state shall retain the evidence while the person remains in custody.

(h) The state shall not be required to preserve physical evidence that is of such a size, bulk or physical character as to render retention impracticable. When such retention is impracticable, the state shall remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing, before returning or disposing of the physical evidence.

(i) Should the state be called upon to produce biological evidence that could not be located and whose preservation was required under the provisions of this statute, the chief evidence custodian assigned to the entity charged with the preservation of * * * the evidence shall provide an affidavit in which the custodian stipulates, under penalty of perjury, an accurate description of the efforts taken to locate that evidence and that the evidence could not be located.

(4) This section does not require the state to preserve the biological evidence that is obtained in performing the test required by Section 99-3-41 and is required to be destroyed under that section.

(* * *5) Any evidence in a murder, manslaughter or felony sexual assault case in the possession of the state on July 1,

2009, whether biological or not, shall be preserved by the state consistent with the legislative intent expressed in subsection (1) and subject to compliance with subsection (3)(f).

(* * *6) **Remedies for noncompliance.** If the court finds that biological evidence was destroyed in violation of the provisions of this section, it may impose appropriate sanctions and order appropriate remedies.

SECTION 3. This act shall take effect and be in force from and after its passage.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 2, 2016


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 24, 2016


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

*April 6, 2016
3:29pm*